

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                |
|--------------------|--------------------------------|
| KENNETH JOHNSON,   | §                              |
|                    | § No. 213, 2011                |
| Defendant Below-   | §                              |
| Appellant,         | §                              |
|                    | § Court Below—Superior Court   |
| v.                 | § of the State of Delaware     |
|                    | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr. ID No. 9904015635        |
|                    | §                              |
| Plaintiff Below-   | §                              |
| Appellee.          | §                              |

Submitted: August 15, 2011

Decided: September 9, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 9<sup>th</sup> day of September 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Kenneth Johnson, filed an appeal from the Superior Court's April 7, 2011 order adopting the March 3, 2011 report of the Commissioner, which recommended that Johnson's third motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.<sup>1</sup> The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the

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<sup>1</sup> Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

face of the opening brief that the appeal is without merit.<sup>2</sup> We agree and affirm.

(2) The record reflects that, in October 2000, Johnson pleaded guilty to 3 counts of Robbery in the First Degree. He was sentenced to a total of 9 years of Level V incarceration, to be suspended after 6 years for probation. Johnson did not file a direct appeal. Johnson filed two previous motions for postconviction relief. The Superior Court denied the first motion. Johnson did not appeal. The Superior Court also denied the second motion. Johnson appealed the Superior Court's judgment and this Court affirmed.<sup>3</sup>

(3) In this appeal from the Superior Court's denial of his third postconviction motion, Johnson claims that the Superior Court erred and abused its discretion when it a) denied his request for transcripts at State expense; and b) denied his postconviction motion as procedurally barred.

(4) Johnson's first claim is that the Superior Court improperly denied his request for transcripts of jury selection, his plea colloquy and his sentencing. The record reflects that Johnson did not request the transcripts until he had filed his notice of appeal in this Court. Moreover, he did not articulate "sufficient and specific reasons" why he needed the transcripts, as

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> *Johnson v. State*, Del. Supr., No. 200, 2010, Holland, J. (Aug. 3, 2010).

he was required to do.<sup>4</sup> In light of the above, we conclude that the Superior Court committed no error or abuse of discretion when it denied Johnson's request for transcripts at State expense.

(5) Johnson next claims that the Superior Court erred and abused its discretion when it denied his postconviction motion on procedural grounds. Johnson contends that, because the 180-day period for bringing him to trial under the Interstate Agreement on Detainers<sup>5</sup> had passed before he was brought to trial, the procedural bars are supplanted by the "miscarriage of justice" exception of Rule 61(i) (5). The record reflects that this claim was raised in Johnson's second postconviction motion and that the Superior Court's denial of that claim was affirmed by this Court. As such, the claim is procedurally barred under Rule 61(i) (4) as formerly adjudicated.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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<sup>4</sup> *Bratcher v. State*, Del. Supr., No. 331, 1998, Walsh, J. (Nov. 10, 1998).

<sup>5</sup> Del. Code Ann. tit. 11, §2542(a).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice